

***In re National Prescription Opiate Litigation: MDL 2804***

**DEFENDANTS' DAUBERT MOTION TO EXCLUDE OPINIONS  
OFFERED BY JONATHAN GRUBER**

**Summary Sheet**

**Motion Name:** Defendants' *Daubert* Motion to Exclude Opinions offered by Jonathan Gruber

**Concise Description:**

Gruber offers *ipse dixit* "opinions" based on no analysis whatever, instead constructing graphs and charts to "support" his opinion from an array of cherry-picked data. Indeed, Gruber goes so far as to *exclude* from his presentation data that relate to the two plaintiff counties. But graphs and charts of underlying data, which visually imply a conclusion, cannot substitute for analysis based on an accepted methodology. Legitimate expert opinion – particularly in his field – requires more than just "eyeballing" a graph.

At his deposition, Gruber could not name or point to any textbook explaining any legitimate, recognized methodology behind the graphic analyses he performed. Without any underlying reliable analysis, Gruber's opinions illustrated through graphs and charts are not helpful to a fact finder; rather, they are misleading.

For example, Gruber purports graphically to display that Opioid Use Disorder (OUD) rates are higher in the top-quartile of states receiving prescription opioid shipments than they are in the lowest-quartile of states, hoping the fact finder will conclude, as he himself asserts, that it is the increased shipments that *cause* the higher rate of OUD. But he has no regression or other accepted analysis that attempts to prove that causal relationship. Similarly, he purports graphically to display that opioid mortality is higher in the top-quartile of counties for shipments than in the lowest-quartile counties, again hoping the fact finder will conclude, as he himself asserts, that it is the increased shipments that cause the higher rate of mortality. But he performs no regression or other accepted analysis that attempts to prove that causal relationship. Notably, he also concedes that Cuyahoga and Summit Counties are in neither the top- nor the lowest-quartile for shipments, and thus are not reflected in his charts. Without valid underlying analyses, and without any tie to the Plaintiff counties, all of Gruber's key graphics can only mislead the fact finder.

Unlike Plaintiffs' other expert in this area, who concedes that his regression analyses at most show *correlation*, Gruber claims that the effect of shipments on OUD and mortality is *causal*, based on nothing more than the physical appearance of his graphs. Gruber's opinions purporting to show causation through a series of misleading graphics are unreliable because he employed no methodology (much less a reliable one) to reach those opinions. Gruber's opinions therefore should be excluded.

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Reply Date: August 16, 2019